

MEMORANDUM

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Agenda Item No. 7(A)

TO: Honorable Chairman Jose "Pepe" Diaz
and Members, Trade and Tourism Committee

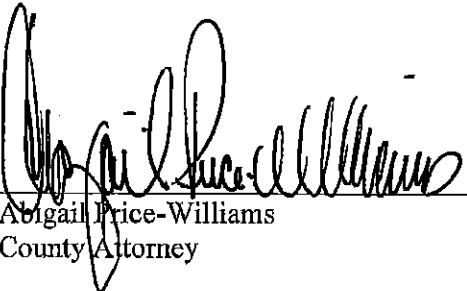
DATE: January 11, 2016

FROM: Abigail Price-Williams
County Attorney

SUBJECT: Report pursuant to Resolution
No. R-885-15 regarding Port of
Miami property deed restrictions,
conditions and reversionary
clauses

The attached Memorandum is being submitted pursuant to Resolution No. R-885-15 sponsored by Commissioner Diaz directing that the County Attorney's Office meet with Attorneys for the City of Miami and the State of Florida to clarify understandings and positions on the restrictions, conditions and/or reversionary interests, regarding the permissible uses of Port of Miami property and provide a report to the Trade and Tourism Committee within 90 days. Please note that the attached Memorandum inadvertently references Resolution No. R-888-15 instead of Resolution No. R-885-15.

The accompanying report was prepared and placed on the agenda at the request of Prime Sponsor Commissioner Jose "Pepe" Diaz.



Abigail Price-Williams
County Attorney

APW/smm

Memorandum



Date: December 30, 2015

To: Honorable Chairman Jose "Pepe" Diaz
and Members, Trade and Tourism Committee

From: 
Abigail Price-Williams
County Attorney

Subject: Report pursuant to Resolution No. R-888-15 regarding Port of Miami Property Deed Restrictions, Conditions and Reversionary Clauses

On October 6, 2015, pursuant to Resolution No. R-888-15, the Board of County Commissioners directed the County Attorney's Office to engage in discussions with attorneys for the State of Florida ("State") and the City of Miami ("City") to clarify the respective understandings and positions of the State and City with respect to the scope of restrictions, conditions and/or reversionary interests arising from prior State and City conveyances to the County of property now operated as the Port of Miami.

By way of background, the Port of Miami currently occupies over 500 upland acres and numerous additional acres of submerged lands in central Biscayne Bay ("Port Land"). The State and the City conveyed portions of the Port Land to the County at various times and pursuant to different deeds and conveyance documents dated from 1925 through 1980, which purport to contain various restrictions, conditions, and/or reversionary interests. Although the State deeds and conveyance documents each differ, the principal restrictions can be summarized as municipal and/or public purpose use restrictions. The principal restrictions in the City deeds can be summarized as municipal, port, and/or seaport uses. In accordance with this Board's directive, the County Attorney's Office has engaged in separate discussions with attorneys for the State and the City seeking to clarify their respective understanding of restrictions.

Summary of Communications with the State

We have contacted the attorneys for the State, who elected to include their Senior Program Analyst in the discussions. Preliminary indications based on this exchange appear to be favorable. We explained the Board's directive to the State's attorneys, and discussed potential clarification of the documents in order to avoid future uncertainty as to the remaining effect of the provisions, if any. We also discussed several Florida statutes that have been enacted since the dates of many of the subject conveyance documents, broadly defining "port facilities" (Fla. Stat. Section 315.02(6)), and defining port leases for maritime or port purposes or operations as serving a governmental, municipal or public purpose (Fla. Stat. Section 196.012(6)). The State's attorneys concurred that these statutes reflect that current Florida law and policy favors port development and broadly empowers governmental units, including counties, to finance, construct, and otherwise develop port facilities, and to lease port facilities to private entities for port purposes and operations.

While the State's attorneys could not specifically commit on behalf of the State to what particular uses would or would not constitute port or public purposes, they did express a willingness to clarify the State deeds in accordance with Florida law and policy, and to assist in removing any potential uncertainty in connection with development of the Port Land. Along these lines, potential language was discussed to clarify that the development, construction, financing, operation and/or lease of port facilities (as that term is defined in Florida Statute Section 315.02) or other structures on the Port Land that enhance, support, complement, or financially contribute to the port, port users, or port facilities would constitute a public, municipal, and port purpose that would not be restricted by such documents or deeds.

The State's attorneys advised that in order to formally clarify this language, the County would be required to request a "Modification of Original Restrictions" (even if the revision is only a clarification and not a modification), which would have to be approved by the Governor and Cabinet. The State personnel advised that they would continue to engage in discussion with the Division Director, Deputy Secretary, Secretary, and cabinet aides to further explore this option, and should be able to follow up with us in mid-January. In the event that this Board wishes to pursue this route, the County must make a formal written request to the State setting forth the particular modification sought, pursuant to a Board resolution. Such request by the County, if made, would then be considered at a subsequent Cabinet meeting. The document approved by the Cabinet would be recorded in the public records of Miami-Dade County after execution by the State.

Summary of Communications with the City

We also have engaged in several conferences with the City Attorney and her staff. We forwarded summary pages from the County's 2035 Port Master Plan to the City in order to provide a framework for discussion. While the City Attorney indicated she did not have authority to bind the City to any particular position, we nonetheless explained the Board's directive and engaged in a good faith dialogue seeking to clarify the position of the City attorneys regarding the scope of the restrictions in the City deeds to the County. Preliminary indications based on this dialogue indicate that the City attorneys appear to view the scope of what is permitted under the City deed restrictions -- generally, for municipal, port or seaport and associated uses -- in a narrow light, and commented that numerous uses set forth in the County's 2035 Port Master Plan were not permitted. For example, City attorneys identified a list of uses they deem objectionable or precluded by City deed restrictions, including trade exposition centers, maritime museums, and a mega yacht marina complex. The City attorneys also objected to advertising signage -- unless the advertising was limited to the Port and its users, and the County's use of Port land for warehouse/industrial uses, other than marine industrial uses and minor repair operations for maintenance of ships. Additionally, the City attorneys preliminarily advised that a hotel use, a waterfront promenade with retail, a restaurant use, and office use would be acceptable *only if* such uses were directly ancillary to port use, and only as an

Honorable Chairman Jose "Pepe" Diaz
and Members, Trade and Tourism Committee
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accompaniment or support use for port users. They also raised several uses not contemplated in the Port's 2035 Master Plan, such as condominium development, residential uses, casinos, stadium uses, and adult entertainment, and advised that they considered such uses to be objectionable. The City Attorney did acknowledge that cruise and ferry uses are considered permitted port uses not restricted by existing City deed restrictions. The preliminary narrow view of the City attorneys appears to be inconsistent with the broad definition of "port facilities" under Florida Statutes Section 315.02(6), and inconsistent with other Florida Statutes promoting port development and deeming same to constitute public or municipal uses.

The City attorneys requested that the respective County and City administrations meet to further discuss the scope of permitted port and seaport uses. Next steps could include negotiation between the respective County and City administrations. Any negotiated agreement would need to be memorialized in a written agreement properly authorized and executed by both parties and recorded in the public records of Miami-Dade County pursuant to resolutions from the County and City Commissions.

c: Honorable Chairman Jean Monestime
and Members, Board of County Commissioners
Honorable Carlos A. Gimenez, Mayor
Charles Anderson, Commission Auditor
Jack Osterholt, Deputy Mayor
Juan Kuryla, Director, Seaport (Port of Miami)
Christopher Agrippa, Director, Clerk of the Board Division